

ORIGINAL

ANN BAVENDER*
HARRY F. COLE*
ANNE GOODWIN CRUMP
VINCENT J. CURTIS, JR.
PAUL J. FELDMAN
FRANK R. JAZZO
EUGENE M. LAWSON, JR.
MITCHELL LAZARUS
SUSAN A. MARSHALL
HARRY C. MARTIN
LEE G. PETRO*
RAYMOND J. QUIANZON
LEONARD R. RAISH
JAMES P. RILEY
ALISON J. SHAPIRO
KATHLEEN VICTORY
JENNIFER DINE WAGNER*
LILIANA E. WARD
HOWARD M. WEISS

*NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ARLINGTON, VIRGINIA 22209-3801

OFFICE: (703) 812-0400

FAX: (703) 812-0486

www.fhhlaw.com

RETIRED MEMBERS
RICHARD HILDRETH
GEORGE PETRUTSAS
CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)
OF COUNSEL
EDWARD A. CAINE*
DONALD J. EVANS
EDWARD S. O'NEILL*
WRITER'S DIRECT

DOCKET FILE COPY ORIGINAL

June 21, 2002

RECEIVED

JUN 21 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Re: MM Docket No. 00-138
RM-9896
Boca Raton, Florida

Dear Ms. Dortch:

Transmitted herewith are an original and four copies of the "Joint Opposition to Petition for Reconsideration" submitted by the School Board of Broward County and Guenter Marksteiner in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,



Anne Goodwin Crump
Counsel for Guenter Marksteiner

Enclosures

cc: Paul H. Brown, Esquire (with enclosure)

No. of Copies rec'd
List ABCDE

014

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

JUN 21 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.622(b),)	MM DOCKET NO. 00-138
Table of Allotments,)	RM-9896
Digital Television Broadcast Stations.)	
(Boca Raton, Florida))	

Directed to: Chief, Video Division, Media Bureau

JOINT OPPOSITION TO PETITION FOR RECONSIDERATION

The School Board of Broward County, Florida ("Broward"), licensee of noncommercial educational television station WPPB-TV, and permittee of WPPB-DT, Boca Raton, Florida, and Guenter Marksteiner ("Marksteiner") hereby respectfully submit their Joint Opposition to the "Petition for Reconsideration" submitted on May 23, 2002, by Sherjan Broadcasting Co., Inc. ("Sherjan"), where Sherjan seeks reconsideration of the *Report and Order*, DA 02-893, released April 22, 2002, ("*R&O*") in the above-captioned proceeding. With respect thereto, the following is stated:

1. The above-captioned proceeding commenced with the filing of a "Petition for Rule Making" by the predecessor-in-interest to Broward, Palmetto Broadcasters Associated for Communities, Inc. ("Palmetto"), in which it requested a substitution of DTV Channel *40 for Station WPPB-DT's assigned DTV Channel *44. Marksteiner filed Reply Comments in support of that proposed change in allotment. The proposed channel substitution is an essential part of a

settlement agreement between Palmetto and Marksteiner, which was later assumed by Broward when it acquired the authorization for WPPB-TV. This agreement settled long-standing litigation between the parties with regard to both WHDT-DT, Stuart, Florida, the first local television station at that community, and WHDT-LP and will allow the continued operation of WHDT-LP. The *R&O* accordingly found that the proposed substitution would serve the public interest and granted the proposed channel substitution.

2. Sherjan has sought reconsideration of the *R&O* based upon its assertion that the proposed channel substitution of DTV Channel *40 for DTV Channel *44 will cause unacceptable interference to its Class A television station WJAN-CA, Miami, Florida, which operates on Channel 41. Sherjan notes that the *R&O* indicates that the Commission staff's engineering analysis indicates that WJAN-CA would receive interference to only 1.03 percent of its service area population, but that the applicable limit is based on a rounding tolerance of only 0.5 percent.¹ Accordingly, Sherjan argues, the channel substitution cannot go forward. Sherjan's position is incorrect, however.

3. Leaving aside the question of the applicable interference limits, the factual premise on which Sherjan's argument is based is not entirely accurate. While the *R&O* does reference interference to 1.03% percent of the service area population, that figure is overstated. As set forth in the attached Engineering Statement, in December 2000, a prior analysis based on OET Bulletin 69 was submitted to the Commission, in which it was demonstrated that interference to WJAN-CA from the proposed WPPB-DT operation would cause interference to only 0.03

¹ It should be noted that Sherjan has indicated no objection to the use of Longley-Rice propagation models, as outlined in OET Bulletin 69, which formed the basis for the Commission's population figures.

percent of WJAN-CA's service area population, well below the Commission's 0.5 percent rounding tolerance. *See* Exhibit 1. In the interim between December 2000, and the present time, however, the Commission has adopted a new computer program to implement OET Bulletin 69, which yields somewhat different population figures, but shows very similar interference area locations. In this instance, however, the standard application of the revised computer program to determine interference yields inflated population figures.

4. The anomaly results from the combination of the fact that the program shows interference to a portion of one particular calculation area "cell" which has a large population. Because the program shows interference to a portion of that cell, the entire population within the cell is calculated as receiving interference. Such is not the case, however.

5. The OET Bulletin 69-based population figures listed in the *R&O* were reached using a standard cell size resolution of two kilometers. The Commission has indicated, however, that a finer resolution may be employed. *See, Public Notice, Additional Application Processing Guidelines for Digital Television*, released August 10, 1998. Indeed, the Commission has approved a number of DTV proposals which made use of a one kilometer cell size resolution. *See, Exhibit 1 at 1.* Use of this finer resolution eliminates from the population count those persons who would be included in a larger cell but would not actually receive interference, hence, providing greater accuracy. As set forth in the attached Engineering Statement, when the calculations are made using the finer resolution, then the results show that the proposed channel change would result in new interference affecting only 0.42 percent of the WJAN-CA service area population. *See, Exhibit 1.* Clearly, this figure is within the 0.5 percent rounding tolerance used by the Commission. Furthermore, the proposed channel change also would provide the

4

protection to the facilities proposed in Sherjan's pending application to modify the WJAN-CA facility, as the change would cause interference to only 0.17 percent of the population within the proposed new WJAN-CA service contour.

6. Therefore, it is clear that the channel change adopted in the *R&O* will not cause prohibited new interference to the operations of WJAN-CA. Thus, Sherjan's legal arguments must fail because their factual premise is incorrect. When the actual figures which show that only 0.42 percent of the WJAN-CA service area population would receive new interference are considered, it is apparent that these figures do not stand in the way of the proposed channel change, and that the change adopted in the *R&O* serves the public interest.

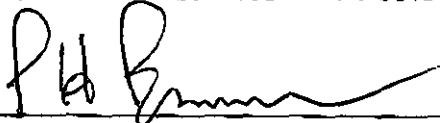
WHEREFORE, the premises considered, Broward and Marksteiner respectfully request that Sherjan's Petition for Reconsideration be denied, and that the *R&O* be affirmed.

Respectfully submitted,

SCHOOL BOARD OF BROWARD COUNTY

Wood, Maines & Brown, Chartered
1827 Jefferson Place, N.W.
Washington, D.C. 20036
(202) 293-5333

By:

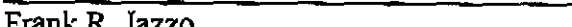

Barry D. Wood
Paul H. Brown

Its Attorneys

GUENTER MARKSTEINER

Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street
Eleventh Floor
Arlington, Virginia 22209
(703) 812-0400

By:


Frank R. Jazzo
Vincent J. Curtis, Jr.
Anne Goodwin Crump

Its Attorneys

June 21, 2002

requisite protection to the facilities proposed in Sherjan's pending application to modify the WJAN-CA facility, as the change would cause interference to only 0.17 percent of the population within the proposed new WJAN-CA service contour.

6. Therefore, it is clear that the channel change adopted in the *R&O* will not cause prohibited new interference to the operations of WJAN-CA. Thus, Sherjan's legal arguments must fail because their factual premise is incorrect. When the actual figures which show that only 0.42 percent of the WJAN-CA service area population would receive new interference are considered, it is apparent that these figures do not stand in the way of the proposed channel change, and that the change adopted in the *R&O* serves the public interest.

WHEREFORE, the premises considered, Broward and Marksteiner respectfully request that Sherjan's Petition for Reconsideration be denied, and that the *R&O* be affirmed.

Respectfully submitted,

SCHOOL BOARD OF BROWARD COUNTY

Wood, Maines & Brown, Chartered
1827 Jefferson Place, N.W.
Washington, D.C. 20036
(202) 293-5333

By:

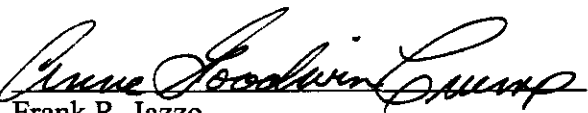
Barry D. Wood
Paul H. Brown

Its Attorneys

GUENTER MARKSTEINER

Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street
Eleventh Floor
Arlington, Virginia 22209
(703) 812-0400

By:


Frank R. Jazzo
Vincent J. Curtis, Jr.
Anne Goodwin Crump

Its Attorneys

June 21, 2002

ENGINEERING STATEMENT
prepared jointly for
School Board of Broward County
and
Guenter Marksteiner
WPPB-DT Boca Raton, Florida
MM Docket 00-138

This engineering statement has been prepared on behalf of the *School Board of Broward County* ("Broward") and *Guenter Marksteiner*, in support of an *Opposition to Petition for Reconsideration* to a Report and Order ("Order") in Mass Media Docket 00-138.¹ The subject Order changed the paired digital television (DTV) assignment for WPPB-TV (NTSC Channel 63, Boca Raton, Florida) from DTV Channel 44 to DTV Channel 40, as requested by the prior licensee of WPPB-TV. *Broward* is the successor licensee of WPPB-DT.

In a Petition for Reconsideration of the Order, filed May 22, 2002, *Sherjan Broadcasting Co., Inc.* ("*Sherjan*"), licensee of Class A television station WJAN-CA (NTSC Channel 41, Miami, FL), took issue with the Order's reliance on a *de minimis* allowance of 2 percent new interference that could be caused to a Class A facility from the WPPB-DT channel change proposal (as calculated using OET Bulletin 69²). *Sherjan* states that a rounding tolerance of 0.5 percent is the applicable limit, and the 1.03 percent interference which would be caused to WJAN-CA (as quantified in the Order) exceeds the 0.5 percent threshold.

Background

In prior submissions in support of MM Docket 00-138, the rounding tolerance of 0.5 percent was clearly referenced by the undersigned for consideration of OET Bulletin 69 analysis.³ Those prior analysis results (as reported in December, 2000) showed that interference to WJAN-CA from the proposed WPPB-DT operation would affect a population of 552 persons, or 0.03 percent of WJAN-CA's service area population, which easily meets the Commission's 0.5 percent rounding

¹See *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Boca Raton, Florida)*, MM Docket No. 00-138, RM 9896, Report and Order, released April 22, 2002.

²"OET Bulletin 69," as referenced herein, refers to the Commission's Office of Engineering and Technology Bulletin number 69, *Longley-Rice Methodology for Evaluating TV Coverage and Interference*, July 2, 1997.

³See *Establishment of a Class A Television Service*, MM Docket 00-10, FCC 00-115, released April 4, 2000, at para 74 .

ENGINEERING STATEMENT

(page 2 of 4)

tolerance for DTV proposals to Class A television stations. *Sherjan* did not dispute those OET Bulletin 69 study results. However, *Sherjan* now raises the issue of the applicable limit for such interference.

The Order indicates that new interference to WJAN-CA, as calculated by Commission Staff using OET Bulletin 69 techniques, would impact 1.03 percent of the WJAN-CA service population. This analysis was made using the Commission's present implementation of OET Bulletin 69 with the "tv_process" computer program. This particular implementation of OET Bulletin 69 had not been developed as of December, 2000 when the undersigned's 0.03 percent determination was made using a similar, but not exactly identical, implementation of OET Bulletin 69.

Subsequent to the development of the Commission's "tv_process" computer program, the "tv_process" evaluation program was installed and made operational on a Sun processor within the office of the undersigned. Analysis by this office of our own "tv_process" results (which do indicate 1.03 percent interference to WJAN-CA) and the prior OET Bulletin 69 results (indicating 0.03 percent), show that in general the programs show very similar interference area locations. However, "tv_process" shows interference to one particular calculation area "cell", which happens to have considerable population. Thus, the difference in calculated interference population percentages changed from 0.03 to 1.03 percent with the implementation of the "tv_process" program.

Fine Resolution Study Result Does Not Exceed Commission Limit

The OET Bulletin 69 results summarized above, indicating 1.03 percent interference predicted to WJAN-CA, were made employing a standard cell size resolution of 2 kilometers. Per the Commission's Public Notice⁴ of August 10, 1998, a finer resolution may be employed. The Commission has granted numerous DTV proposals under the interference criteria §73.623(c)(2) at 1 km cell size resolution.

⁴ "Additional Application Processing Guidelines for Digital Television (DTV)"

ENGINEERING STATEMENT

(page 3 of 4)

Accordingly, based on the finer resolution of 1 km, additional studies were conducted using the Commission's "tv_process" program on a Sun processor.⁵ The results of this analysis, provided in the attached **Table 1**, shows that the WPPB-DT channel change will result in new interference affecting 6963 persons, which is 0.42 percent of the WJAN-CA service population of 1,675,015. This level of interference is within the 0.5 percent rounding tolerance as permitted under Commission policy. Thus, based on an evaluation employing a 1 km cell size, the channel change Order does comply with published Commission policy regarding the *de minimis* level of interference permitted to a Class A station.

Impact to WJAN-CA Pending Application Also *de minimis*

Additionally, *Sherjan* has tendered an application (file number BPTTA-20010116AGG) to modify the WJAN-CA facility. An additional interference analysis showed that the WPPB-DT channel change (at 1 km resolution) would cause interference to the WJAN-CA application facility, affecting 3560 persons, which is 0.17 percent of the proposed WJAN-CA protected contour population of 2,111,602. The results of this study are also presented in **Table 1**. Thus, the WPPB-DT channel change also does not exceed the Commission's 0.5 percent rounding tolerance with respect to the pending WJAN-CA application facility.

Conclusion

Considering the 0.5 percent rounding tolerance for DTV interference to Class A stations, (which is more stringent than the 2 percent allowance referenced in the Commission's Order), OET Bulletin 69 analysis at 1 km cell resolution shows that the WPPB-DT channel change does meet published Commission policy with respect to WJAN-CA.

Certification

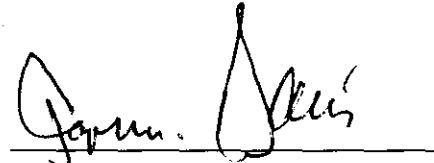
The undersigned hereby certifies that the foregoing statement was prepared by him or under his direction, and that it is true and correct to the best of his knowledge and belief. Mr. Davis is a principal in the firm of *Cavell, Mertz & Davis, Inc.*, is a Registered Professional Engineer in

⁵This implementation of OET Bulletin 69 has provided identical results to those obtained by Commission Staff.

ENGINEERING STATEMENT

(page 4 of 4)

Virginia, holds a Bachelor of Science degree from Old Dominion University in Electrical Engineering Technology, and has submitted numerous engineering exhibits to various local governmental authorities and the Federal Communications Commission. His qualifications are a matter of record with that entity.



Joseph M. Davis, P.E.
June 17, 2002

Cavell, Mertz & Davis, Inc.
7839 Ashton Avenue
Manassas, VA 20109
703-392-9090

List of Attachments

Table 1 OET Bulletin 69 Interference Analysis Results

Table 1
OET BULLETIN 69 INTERFERENCE ANALYSIS RESULTS
 prepared jointly for
School Board of Broward County
and
Guenter Marksteiner
 WPPB-DT Boca Raton, Florida
 MM Docket 00-138

Commission Computer Program "tv_process"
Analysis Results for Licensed WJAN-CA
(1 km cell resolution)

Results for: 41N FL MIAMI	BLTTL	19971010JK	LIC
	POPULATION	AREA (sq km)	
within Noise Limited Contour	1675015	1340.2	
not affected by terrain losses	1675015	1340.2	
lost to NTSC IX	0	0.0	
lost to additional IX by ATV	6963	60.3	
lost to all IX	6963	60.3	
Potential Interfering Stations Included in above Scenario			1
40A FL BOCA RATON	BPRM	20000328AAE	APP

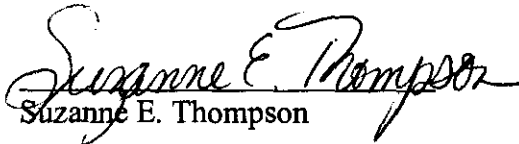
CERTIFICATE OF SERVICE

I, Suzanne E. Thompson, do hereby certify that I have, this 21st day of June, 2002, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing "Joint Opposition to Petition for Reconsideration" to the following:

Peter Tannenwald, Esquire
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W.
Suite 200
Washington, D.C. 20036-3101
Counsel for Sherjan Broadcasting Co., Inc.

John R. Feore, Jr., Esquire
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802
Counsel for Channel 63 of Palm Beach, Inc.

Kevin C. Boyle, Esquire
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004-1304
Counsel for Palmetto Broadcasters Associated for Communities, Inc.


Suzanne E. Thompson